

Agenda

Item #3



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 19, 2011

Re: Proposed Insertion to Policy on Paying Campaign Funds to Family Members

On July 30, 2009, the Commission adopted a policy concerning how it would administer 21-A M.R.S.A. § 1125(6-C), which relates to candidates' payments of public campaign funds to members of the candidate's immediate family. Under that provision, Maine Clean Election Act candidates are generally forbidden from paying public campaign funds to family members, except in narrow circumstances when the family member is providing a good or service to the campaign "in the normal course of the [family member's] occupation or [] business."

In general, the Commission staff is in favor of interpreting "normal course" to mean the regular or ongoing employment of the family member. We believe that is consistent with the Commissioners' discussion at the July 30, 2009 meeting.

For the 2012 elections, the Commission staff recommends one insertion on page 2 of the policy:

Occasional or sporadic employment on political campaigns (e.g., field work, public relations, or organizing volunteers) will generally be insufficient to demonstrate a normal course of occupation or business.

We wish to put MCEA candidates on notice that if a member of the candidate's immediate family occasionally or sporadically has received compensation for work on political campaigns, that occasional or sporadic work would not be sufficient to qualify the family member to receive MCEA funds for good or services rendered to the campaign.

If you find that acceptable, the staff asks that you adopt this change to the policy at your October 28 meeting.

Thank you for your consideration of this issue.



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POLICY ON PAYING CAMPAIGN FUNDS TO FAMILY MEMBERS

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's immediate family or household.

DISCLOSING A PAYMENT TO A MEMBER OF THE CANDIDATE'S FAMILY OR HOUSEHOLD (applies to gubernatorial, legislative, and county candidates)

- *Traditionally financed candidates.* If a candidate uses campaign funds to pay or reimburse a member of the candidate's immediate family or household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report.
- *Maine Clean Election Act candidates.* If a candidate uses Maine Clean Election Act funds to pay or reimburse a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report.

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the immediate family of the candidate's domestic partner, the half-brother or half-sister of the candidate's spouse, or the spouse of the candidate's half-brother or half-sister. (21-A M.R.S.A. §§ 1(20) & 1122(4-A))

RESTRICTIONS FOR MAINE CLEAN ELECTION ACT CANDIDATES (21-A M.R.S.A. § 1125(6-C))

A candidate may not pay Maine Clean Election Act (MCEA) funds to:

- the candidate or a sole proprietorship owned by the candidate,
- a member of the candidate's immediate family or household,
- a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest, or
- a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer.

The Legislature also provided two narrow exceptions to this prohibition:

I. Permitted Payments to the Candidate and Household Members

A candidate may use MCEA funds to pay a member of the candidate's immediate family or household, a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest, or a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer only if the expenditure is made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

The candidate shall provide documentary evidence that the expenditure qualifies for the exception at the time the expenditure is reported or when the Commission requests such evidence, whichever is sooner. This evidence must consist of documentation that the payee currently is employed by or engaged in a business that provides the goods or services provided; justification for the amount of the expenditure including the usual price paid by other clients; and an explanation of why the expenditure is campaign-related. Occasional or sporadic employment on political campaigns (e.g., field work, public relations, or organizing volunteers) will generally be insufficient to demonstrate a normal course of occupation or business.

II. Reimbursements

Reimbursements, including travel reimbursements, that are made in accordance with the Commission's rules and guidelines are exempt from this restriction. However, the candidate must disclose the family or household relationship when reporting the reimbursement as described above.

If a MCEA candidate or a family or household member uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate must reimburse the individual with MCEA funds. (There are limited circumstances when reimbursement is not required. Please refer to the Commission's *Candidate Guide* for more information.)

H. Otherwise substantially violated the provisions of this chapter or chapter 13; or

I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section.

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

5-B. Restrictions on serving as treasurer. A participating or certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign, except that the candidate may serve as treasurer or deputy treasurer for up to 14 days after declaring an intention to qualify for campaign financing under this chapter until the candidate identifies another person to serve as treasurer.

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8-A for certified candidates in a contested election.

6-B. (REPEALED)

6-C. Expenditures to the candidate or family or household members.

Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection.

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services.

B. A candidate may not make expenditures using fund revenues to pay a member of the candidate's immediate family or household, a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest or a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer, unless the expenditure is made:

- (1) For a legitimate campaign-related purpose;
- (2) To an individual or business that provides the goods or services being purchased in the normal course of the individual's occupation or the business; and
- (3) In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

For the purpose of this paragraph, "business entity" means a corporation, limited liability company, limited partnership, limited liability partnership and general partnership.

If a candidate uses fund revenues for an expenditure covered by this paragraph, the candidate shall submit evidence demonstrating that the expenditure complies with the requirements of this paragraph if requested by the commission.

This subsection does not prohibit reimbursement to the candidate or a member of a candidate's household or immediate family when made in accordance with this chapter and rules adopted by the commission.

6-E. Expenditures for television advertising. A candidate must include closed-captioning within any television advertisement that the candidate provides to a broadcasting or cable television station for broadcast to the public, except for an advertisement aired in the final 4 days before an election if inclusion of closed-captioning during that period is impractical or would materially affect the timing of the candidate's advertisement.

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8-A in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15 of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.

B. Within 3 days after certification, for all candidates certified between March 15 and the end of the qualifying period of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15 of the election year.

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

7-A. Deposit into account. The candidate or committee authorized pursuant to section 1013-A, subsection 1, shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.